



Dated: September 24, 2010

The following is ORDERED:

A handwritten signature of Tom R. Cornish in black ink, written over a horizontal line.

Tom R. Cornish
UNITED STATES BANKRUPTCY JUDGE

NOT FOR PUBLICATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:

FASTECH, LLC,

Debtor.

Case No. 09-82174-TRC

Chapter 7

CHARLES GREENOUGH, TRUSTEE,

Plaintiff,

v.

Adversary No. 10-8013-TRC

DAVID MCDOWELL,

Defendant.

ORDER

There comes on for consideration before the Court Plaintiff's Motion for Summary Judgment (Docket Entry 11), and Defendant's Objection (Docket Entry 22). After reviewing the briefs and record submitted, the Court determines that Plaintiff's Motion must be denied.

To prevail on a motion for summary judgment, the moving party must establish that there is "no genuine issue as to any material fact and that the movant is entitled to judgment as a matter

of law.” Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056. Facts must be viewed in the light most favorable to the nonmoving party, but only if there is a genuine dispute as to those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

Although the Court admits that this is a close question, the Court finds that there is a genuine issue for trial. Defendant has raised several factual issues, including the valuations used in the Trustee’s liquidation analysis and the Defendant’s payment to creditors out of the loan closing proceeds, as well as raised affirmative defenses that depend upon a factual analysis. The Court cannot make these factual determinations based upon the record presented on summary judgment. Accordingly, Plaintiff’s motion must be denied, and the case shall proceed to trial as previously ordered.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Summary Judgment (Docket Entry 11) is **denied**, and this matter shall proceed to trial in accordance with this Court’s Order and Notice of Trial (Docket Entry 24).

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